IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

Nos. 73-1820
74-132

PAUL R. PHILBROOK, ETC. and
CASPAR W. WEINBERGER, ETC., APPELLANTS,

v.

JEAN GLODGETT, ET AL.

MOTION TO AFFIRM ON BEHALF OF APPELLEES

The appellees, Jean and Deanna Glodgett and their minor child, Tina Glodgett; Roger and Rosamund Percy and their minor children, Sharon, Sheila, Roger, Mary, Matthew and Charon Percy; Roger and Arlene Derosia and their minor children Larry, Harold, Arthur, Mary and Brian Derosia; and Intervenors Robert and Tiana Spicer and their children Samantha and Stephanie Perry; and Mary and William Sarazin and their minor children Tina, William and Sean Sarazin, pursuant to Rule 16 of this Court's Rules, hereby move that the judgment below be affirmed on the grounds that the question on which the appeal of the cause depends is so insubstantial as not to need further argument and that the decision below is plainly correct.

QUESTIONS PRESENTED

1. Whether federal court jurisdiction extends to the statutory claim irrespective of whether the Court has pendent jurisdiction over the Secretary of the U.S. Department of Health, Education and Welfare.

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2. Whether the district court properly read 42 U.S.C. Section 607(b)(2)(C)(ii) as applicable only to the actual receipt of state unemployment compensation thus giving the father the option of declining unemployment benefits in favor of higher ANFC-UP payments.

3. Whether the decision of the district court conflicts with the decision in Burr v. Smith, 322 F. Supp. 980 (W.D. Wash. aff'd. 404 U.S. 1027 (1972).

STATEMENT

Subchapter IV(A) of the Social Security Act of 1935, 42 U.S.C. Sections 601-643, provides for grants to states for Aid and Services to Needy Families with Children. Section 601 of Title 42 authorizes an appropriation for the purpose of enabling the states to furnish financial assistance to needy dependent children and their parents or relatives with whom they are living "to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection,..."

Until 1961, benefits under the AFDC program were limited to needy children who had been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent,..." 42 U.S.C. Sec. 606. In recognition of the fact that the limitation on eligibility for AFDC meant that "unemployed fathers are forced to desert their families in order that their families may receive aid" and that "there is no reason why a hungry child of an unemployed father should not be fed, as well as a child in other unfortunate

circumstances, 1/ the federal administration proposed in 1961 that AFDC eligibility be extended to children in intact families who were disadvantaged due to the unemployment of a parent. With some modifications, the Administration proposal became Section 407 of the Social Security Act, 42 U.S.C. Section 607. That provision gave the states the option of expanding the definition of "dependent child" to include a needy child who has been deprived of parental support or care by reason of the unemployment (as defined by the state) of a parent. Act of May 8, 1961, Pub. L. 87-31, 75 Stat. 75.

Originally enacted for a one year period, Section 407 was extended for five years by the 1962 amendments to the Social Security Act; extended again until June 30, 1968, and finally amended in its entirety and made permanent in 1968.

In the course of amending Section 407 in 1967, 2/ Congress inserted a provision that had the effect of denying federal funds to reimburse states for payments made to families where the unemployed father was also receiving unemployment compensation. 3/ Section 407(b)(2)(C)(ii) presently provides:

> "(b) The provisions of subsection (a) (the expanded definition of 'dependent child') shall be applicable to a State if the State's plan approved under Section 602 of this title--
>
> ***
>
> (2) provides--
>
> ***
>
> (C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section--
>
> ***
>
> (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States."

The State of Vermont has implemented the disqualification provision by Welfare Regulation 2331.31 and interprets it to mean that if a father is merely eligible for unemployment compensation, no matter how small the benefit, the family is automatically and totally disqualified from ANFC-UF regardless of need.

This action was initiated by several Vermont families to challenge the constitutionality of the disqualification provision or, in the alternative, to construe it to apply only to the actual receipt of unemployment compensation. In each case the amount of unemployment compensation available to the family was less than its entitlement under the ANFC-UF program. 4/ The suit sought declaratory and injunctive relief against the Secretary of the U.S. Department of Health, Education and Welfare and the Commissioner of the Vermont Department of Social Welfare. Since it sought to enjoin the enforcement of a federal statute and a welfare regulation of statewide application, a three judge court was convened.

The Court sustained plaintiffs' claim that 42 U.S.C. Section 607(b)(2)(C)(ii) affords the family an option of rejecting unemployment compensation in favor of the higher ANFC-UF benefits, without reaching the claims based on the Fifth and Fourteenth Amendments. In a supplemental Opinion and Order dated December 28, 1973, the Court held that the judgment would operate prospectively to the benefit of all others similarly situated.

On March 1, 1974, acting on a motion filed by the Department of Social Welfare, the court granted a conditional stay of its judgment with respect to similarly situated families. Under the terms of the stay, persons receiving unemployment compensation are permitted to apply for and receive supplemental financial assistance from the Department of Social Welfare so that the total amount of benefits equals the amount they would

otherwise receive under ANFC-UF.

ARGUMENT

1. Federal jurisdiction extends to the statutory claim even assuming that the Court lacks pendent jurisdiction over the Secretary of the Department of Health, Education and Welfare

The jurisdictional basis for the action against Commissioner Philbrook was 28 U.S.C. Sec. 1343(3). Jurisdiction against Secretary Weinberger originally was predicated on 28 U.S.C. Sec. 1331 and 28 U.S.C. Sec. 1361. The District Court, relying on Aguayo v. Richardson, 473 F.2d 1090, 1102 (2d Cir. 1973)cert. denied, 94 S. Ct. 900 (1974), held that 28 U.S.C. Sec. 1343(3) afforded jurisdiction over both sets of defendants. The court reasoned that it had pendent jurisdiction over the claim against the Secretary since his enforcement of the disqualification provision made him partially responsible for the deprivation of benefits.

It is clear that the court had jurisdiction over the Commissioner by virtue of 28 U.S.C. Section 1343(3). Although the Solicitor General states that the question of pendent jurisdiction over the Secretary is "difficult and complex," he also suggests that if this Court should affirm the District Court's decision,

> "the jurisdictional question with respect to the Secretary would become inconsequential since the Secretary as well as the State would, of course, administer the statute in accordance with this Court's interpretation of it." Brief of HEW, n. 8, p. 17.

Apparently, the Solicitor General's position is that subject matter jurisdiction conferred by 28 U.S.C. 1343(3)

gives the Court ancillary jurisdiction to construe the provisions of the Social Security Act irrespective of the Secretary's presence as a party to the litigation. Cf. Glover v. McMurray, 361 F. Supp. 235, 241 (S.D.N.Y. 1973). Assuming that the Solicitor General is correct that the difficult jurisdictional question can be obviated in this fashion, there would be no impediment to a summary affirmance of the District Court's judgment for the reasons hereinafter set forth.

2. The Court properly held that 42 U.S.C. Sec. 607(b)(2)(C)(ii) provides families with an option and excludes families from ANFC-UF benefits for only those weeks in which an otherwise eligible father elects to receive unemployment compensation

A. The statutory language is clear, making it unnecessary to explore the purposes of the statute by resorting to the legislative history

It is well settled that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. Osaka Shoshen Kaisha Line v. United States, 300 U.S. 98, 101 (1937); Kuehner v. Irving Trust Co., 299 U.S. 445, 449 (1937); Wilbur v. United States, 284 U.S. 231, 237 (1931). The District Court held that "It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation." Glodgett v. Betit, 368 F. Supp. 211, 217 (D.Vt. 1973). The Court is not confronted, as it was in Richards v. United States, 369 U.S. 1, 11 (1962), with an inherently ambiguous phrase such as "law of the place;" or with imprecise words such as "restrain or coerce," at issue in NLRB

v. Allis Chalmers Mfg. Co., 388 U.S. 175, 184 (1967); or language which "does not make clear its intended scope." Allen v. State Board of Elections, 393 U.S. 544, 570 (1969).

Internal evidence that Congress was capable of making a distinction between "receipt" of unemployment compensation and "eligibility" for benefits is found in another subsection of the same statute, enacted on the same day as Section 607 (B)(2)(C)(ii). Section 607(b)(i)(C) sets forth the qualifications of prior attachment to the labor force required for state participation in the AFDC-UF program. A family will qualify only if the father (1) has six or more quarters of work in any thirteen calendar quarter period ending within a year of applying for ANFC or (2) if he received or was qualified to receive unemployment compensation within the meaning of subsection (d)(3) of Section 607. Section 607(d)(3)(A) states that an individual shall be deemed "qualified for unemployment" if "he would have been eligible to receive such unemployment compensation upon filing application,..."

The failure of Congress to utilize similar language in Section 607(b)(2)(C)(ii) or to incorporate Section (d)(3)(A) by reference suggests that a family was to be excluded from ANPC-UF only for each week in which the father actually received unemployment compensation.

This was a view originally shared by the Department of Health, Education and Welfare. 5/ Thus, in footnote two of its initial brief in the District Court, the government unequivocally stated:

> "It is the receipt of unemployment benefits and not merely eligibility for such benefits which is the operative factor here; Section 607 (b)(2)(C)(ii) turns on receipt of unemployment compensation, not eligibility for such benefits."

The Court relied on this statement as accurately reflecting the Government's position. Glodgett v. Betit, 368 F. Supp., supra, at 217. 6/

The appellants urge the Court to apply the rule that it will look beyond the words where a literal reading would lead to absurd or futile results or an unreasonable one "plainly at variance with the policy of the legislation as a whole." Perry v. Commerce Loan Co., 383 U.S. 392, 400 (1966), quoting United States v. American Trucking Assns., 310 U.S. 534, 543 (1940). However, the literal reading given the statute by the Court produces none of these.

Ensuring a subsistence income for all children made needy due to the unemployment of their fathers can hardly be considered absurd or futile. Nor does the Court's construction conflict with the intent of other relevant provisions of the same statutory scheme. The Commissioner relies on 42 U.S.C. Sec. 602(a)(7) and its implementing regulations to support its thesis that an irreconcilable conflict results from the Court's application of the statute. The conflict said to arise is illusory.

42 U.S.C. Sec. 602(a)(7) simply instructs the state agency to take income and other resources into consideration in determining the need of applicants for AFDC. But receipt of unemployment compensation works a complete disqualification from the program regardless of need. As the Commissioner points out in footnote 14 of his brief, unemployment compensation as a resource is sui generis in requiring automatic disqualification from AFDC benefits.

The references to the Handbook of Public Assistance Administration on pages 10 and 11 of the Commissioner's brief

all predate the enactment of Section 607(b)(2)(C)(ii) in 1968. Therefore, it is not surprising that unemployment compensation is referred to as a resource. From 1961 to 1968 it was optional with the states to supplement unemployment compensation with AFDC payments. In any event, since the Handbook references are to the OASDI program, they are of questionable materiality.

The superseding regulations in 45 C.F.R. 233.20(a)(3)(ii)(c) and 45 C.F.R. 233.20(a)(3)(ix), cited by the Commissioner, are similarly inapposite. The scope of those regulations is placed in proper perspective by 45 C.F.R. 233.20(a):

> "Requirements for State Plans. A State Plan for OAA, AFDC, AB, APTD, or AABD must, as specified below:
> (1) General. Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where otherwise specifically authorized by Federal Statute."

Since unemployment compensation is statutorily treated differently from other resources in that recipients are disqualified regardless of need, these regulations do not apply.

The category of Dependent Children of Unemployed Fathers is separately treated in 45 C.F.R. 233.100. Those regulations lend no support to the appellants' position. 45 C.F.R. 233.100(a)(5)(ii) tracks the statutory language in providing for the denial of aid to a dependent child "with respect to any week for which such child's father receives unemployment compensation...." The regulations also emphasize the difference between the statutory language in Section 607(b)(1)(c) and 607(d)(3) defining the term "qualified for unemployment." 45 C.F.R. 233.100(a)(3)(ii) and 45 C.F.R. 233.100(a)(3)(v).

Finally, the Commissioner argues that the District Court's reading of Section 607(b)(2)(C)(ii) produces extraordinary results by (1) shifting the burden of supporting unemployed fathers and their families from employer contributions to welfare; (2) by unjustly enriching employers by reducing their rate of contribution to the unemployment fund over a period of time, and (3) by encouraging "program shopping."

But the incidental effects on the unemployment insurance fund are not "extraordinary results" when the differing purposes of the two programs are taken into consideration. "Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed." Report of Senate Finance Committee, No. 628 74th Cong. 1st Sess. p.11 (1935). As this Court recently said in California Human Resources Dept. v. Java, 402 U.S. 121, 130 (1971):

> "It is true, as appellants argue, that the unemployment compensation insurance program was not based on need in the sense underlying the various welfare programs that had their genesis in the same period of economic stress a generation ago. A kind of "need" is present in the statutory scheme for insurance, however, to the extent that any "salary replacement" insurance fulfills a need caused by lost employment, the objective of Congress was to provide a substitute for wages lost during a period of unemployment not the fault of the employee."

The Commissioner argues that it was originally the intention of Congress, as revealed in the legislative history of 1935, that unemployment compensation would be the first line of defense for the unemployed, providing a subsistence income without the necessity of resorting to relief. But the Commissioner acknowledges that the distinction was "somewhat obscured" in 1961 when Congress expanded the definition of "dependent child" with the express purpose of including the children of the unemployed. Brief of Dept. of Soc. Welfare pp. 17-18. The mere fact that in 1935 Congress recognized

that unemployment compensation would incidentally benefit many children in the homes of unemployed workers does not mean that in 1968 it would brook a harsh discrimination against those children. 7/

Nor would the Court's application of the statute necessarily inure to the economic benefit of employers. Since employers are segregated into rate classes for purposes of determining their contribution rate to the fund, 21 V.S.A. Sec. 1326(A)(2), their rate would change only if their class changed. 8/ Moreover, even if the contribution rate did decline, this cannot be characterized as a "windfall" or "unjust enrichment." It simply means that the employer would not be taxed at as high a rate in the future because his employees were drawing less from the fund.

The problem of notice alluded to by the Commissioner as "program shopping" is hardly the type of extraordinary result that would justify a departure from the plain meaning of the statutory language.

It is not an "extraordinary result" that Congress should make provision for those families in which the amount of available unemployment compensation falls far below the subsistence level as defined by the State for purposes of its ANFC program. Indeed, it would be extraordinary if some children were deprived of subsistence solely due to their father's eligibility for unemployment compensation. 9/

Where the language of Section 607(b)(2)(C)(ii) is "crystal clear," Allen v. State Board of Education, 393 U.S., supra, at 570, internally consistent, Malat v. Riddell, 383 U.S. 569, and compatible with other provisions of the Aid to Families with Dependent Children program, there is no occasion to depart from the literal meaning of the statutory language. Kuehner v. Irving Trust Co., supra; Wilbur v. United States, supra.

P. Assuming the circumstances of this case require resort to the legislative history, that history is not at variance with the district court's reading of the statute

It is clear that when Congress created the optional unemployed parent program in 1961, it left it up to the individual states to decide whether AFDC could be used to supplement unemployment compensation. This was an early recognition that state unemployment compensation benefits might fall below the level of subsistence. The legislative history since 1967 is unilluminating as to Congress' intention regarding the impact that eligibility for unemployment compensation would have on eligibility for AFDC-UF.

The House Ways and Means Report [10] simply states that "Under the committee bill, states must exclude from the program anyone who is receiving unemployment compensation."

The report of the Senate Finance Committee [11] was concerned that under the House bill a family was excluded from AFDC for any month in which the father received unemployment compensation.

> "The House bill prohibits the payment of assistance (with federal participation) to a family that receives any amount of unemployment compensation during the same month. Since the unemployment compensation may be for only a small part of the month, a family's income could be far below the state's standard of need and still the family would be ineligible for assistance. The committee bill returns to existing law under which the choice as to whether unemployment compensation payments can be supplemented, is left to the states."

The conference report [12] sheds no light on the matter and, in fact, muddies the waters even more. The report states:

"Unemployed Fathers Under AFDC"

"Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House Bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid and fathers who receive (or are qualified to receive) any unemployment compensation under state law."

The Senate amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill).

The Senate recedes (except on the conforming amendments and effective date provisions)."

The committee was clearly talking about the eligibility requirement that the father either have six quarters of work in the previous thirteen calendar quarters or been receiving or qualified to receive unemployment compensation within the year prior to his applying for ANFC, and not the exclusion of families in which the father is currently receiving unemployment compensation. The second paragraph simply describes the amendment offered by the Senate which would have excluded these two eligibility provisions and retained the optional supplement approach of the 1961 legislation. While the syntax is confusing, it is clear that the committee was describing two quite different proposals. This reading is bolstered by the fact that there is nothing in the House report to indicate that families would be excluded if the father is presently eligible for unemployment compensation but refuses to accept it.

This analysis is furthered by the 1968 conference report, 13/

> "Section 302. Aid to families with dependent children in case of unemployed fathers receiving unemployment compensation.
>
> Section 302 of the conference substitute corresponds to section 14(c) and (d) of the Senate amendment. Section 14(c) and (d) eliminated the provision (in sec. 407(b)(2)(C) of the Social Security Act) prohibiting the payment of AFDC to a family on the basis of the father's unemployment for any period in which the father receives unemployment compensation under State or Federal law, and substituted a provision (in sec. 407(c)) giving each state the option under the State plan to deny all or any part of the aid otherwise payable under the plan to a family on the basis of the father's unemployment for any month if the father received unemployment compensation under State or Federal law for any week or part of which is included in such month. There was no corresponding provision in the House bill.
>
> Section 302 of the conference agreement instead modifies section 407(b)(2)(C) of the act to prohibit the payment of AFDC to a family on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation under State or Federal law. It is the intention of the conferees that if the father receives unemployment compensation for all the weeks which fall wholly or partly in a month, the family could not under any circumstances receive all AFDC payment for that month; and if the father receives unemployment compensation for one or more but less than all the weeks which fall (wholly or partly) in a month, the family's AFDC payment will be reduced by the percentage of the month represented by such week or weeks (or by the portion of such week or weeks which falls in such month)."

Again, the conference committee speaks solely in terms of the father's "receipt" of unemployment compensation and not his eligibility to receive such benefits.

On page 12 of his brief, the Solicitor General refers to a Report of the Senate Finance Committee to support his interpretation of Section 607(b)(2)(C)(ii). However, the language he quotes is merely a heading preceding the names of

certain persons who gave testimony before the Senate Committee. This is hardly persuasive of Congress' intention in enacting the disqualification provision. 14/

3. Burr v. Smith, 322 F. Supp. 980 (W.D. Wash. 1971) aff'd. 404 U.S. 1027 (1972) did not resolve the issues raised in the case at bar

Appellants take the position that the District Court's decision in the instant case is in irreconcilable conflict with Burr v. Smith, supra. In Burr v. Smith, the plaintiffs attacked the state regulation implementing the disqualification provision without attacking the federal statute itself. The court simply noted that the availability of federal matching funds depended upon inclusion of this provision in the state plan and held that this was a rational basis for the state regulation. In a footnote, the district court noted that a father could not avoid disqualification by failing to register for and receive unemployment compensation, citing Washington State welfare regulations to that effect. But the court did not address the question, presented here, whether these were in conflict with the federal statute.

Plaintiffs also argued that the state had an obligation to set up a wholly state funded plan to supplement benefits of unemployed fathers receiving unemployment compensation. The court rejected plaintiffs' equal protection argument and offered several justifications for different treatment. This Court, in affirming without opinion, might have agreed that there were rational bases on which to excuse the state from creating and funding its own program. Manifestly, the instant case arises in a different context and Burr is not controlling.

CONCLUSION

For the foregoing reasons, the judgment of the United States District Court for the District of Vermont should be affirmed.

September 25, 1974

Respectfully submitted,

Richard S. Kohn, Esq.
Box 43
Danville, Vermont 05828

FOOTNOTES

1/ Statement and Testimony of Abraham Ribicoff, Secretary of the U.S. Department of Health, Education and Welfare. Hearings on H.R. 3864 and H.R. 3865 before the House Committee on Ways and Means, 87th Cong. 1st Sess. at 95 (1961).

2/ Congress' primary concern in amending Section 407 was to correct the disparity in eligibility requirements that had resulted from the provision in Section 407 that "unemployment" be defined by the states. Section 407, as amended, empowers the Secretary of Health, Education and welfare to define "unemployed." See H.R. Report No. 544, 90th Cong. 1st Sess. 108 (1967); S. Report No. 744, 90th Cong. 1st Sess. 160 (1967). See Levy, Lewis and Martin, Social Welfare and the Individual, 430-32 Foundation Press (1971).

3/ As originally enacted, Section 407(b)(2)(C)(ii) provided for the denial of AFDC to any child "if, and for as long as, such child's father--

> "(i) is not currently registered with the public employment offices in the state, or (ii) receives unemployment compensation under an unemployment compensation law of a State or of the United States."

Act of Jan. 2, 1968, Pub. L. 90-248, Title II, Sec. 203(a), 81 Stat. 882.

4/ The differential in monthly benefits for each family is shown by a chart prepared by HEW for its brief and reproduced here:

	AFDC	UNEMPLOYMENT COMPENSATION
Glodgett.....	$239	$60
Derosia	394	56
Percy.....	410	172

Plaintiffs submitted a Memorandum Concerning Average Monthly Payments Under AFDC-UP and Unemployment Insurance in the District Court utilizing statistics based on fiscal year 1972. This study showed that the average AFDC-UP payments were greater than average UI payments in 16 of the 25 states participating in the UP program and that 81% of families receiving AFDC-UP lived in those 16 states.

5/ See brief of the Department of Health, Education and Welfare dated August 11, 1972, p.7 note 2, and p. 17.

FOOTNOTES (continued)

6/ The Solicitor General avers that the district court must have overlooked a "clarifying" statement contained in a subsequent memorandum of law. Brief of HEW, No. 74-132, p.7, note 2. Presumably, the court felt that HEW was bound by its original representation, which is consistent with its regulation contained in 45 C.F.R. 233.100(a)(5)(ii).

7/ Aside from the fact that it is sophistry to speak in terms of "shifting the burden of support" when the purposes of the programs are dissimilar, it should be remembered that not all families who would prefer to exercise the option will automatically qualify for AFDC-UF. For example, the father must meet the eligibility requirements of Section 607(b)(1) and cannot have over $1800 in resources to be eligible.

8/ Whether or not the employer's class changed would depend on a number of variables including the amount of the employer's benefit ratio, the amount of his annual taxable payroll and its relationship to annual taxable payrolls of other employers. 21 V.S.A. Sec. 1326(A)(1). The classes are determined by cumulative payroll percentage limits. (Col. B of Table accompanying 21 V.S.A. Sec. 1326). Absent the right combination of factors, an employer whose taxable payroll is near the ceiling would not have his contribution rate reduced.

9/ This result would be particularly irrational in light of the fact that a man who quits his "voluntarily without good cause attributable to his employer" or who is discharged for misconduct connected with work is disqualified from receiving unemployment compensation for up to twelve weeks. 21 V.S.A. Sec. 1344. His family will be eligible for the higher AFDC benefits. It is the man who leaves for good cause whose family is penalized.

10/ H.R. Report No. 544 (accompanying H.R. 12080) 90th Cong. 1st Sess. at 108 (1967).

11/ S. Fin. Comm. Rep. No.744, 90th Cong. 1st Sess. at 160 (1967).

12/ H.R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967).

13/ S. Rep. No. 1014, 90th Cong. 2d Sess. 9 (1968)

14/ These "headings" purport to summarize the testimony of the persons whose names appear under them. The following caveat appears as an Editor's Note:

> "Editor's Note.--Due to the voluminous oral and written testimony on H.R. 12080 and related proposals, in order for any summary to be useful, it is necessary to broadly categorize positions of organizations and individuals. In so doing, it should be understood that it is not possible to include all of the qualifications or conditions with which such organizations and/or individuals may have accompanied such position on each issue. Nor is it possible to attempt an interpretation of a stated position. Nevertheless, an objective attempt has been made to present fairly the position of each witness."
> Brief Summary of Major Recommendations Presented in Oral and Written Statements During Public Hearings before Senate Committee on Finance, on H.R. 12080, 90th Cong., 1st Sess., p. vii (Committee Print 1967).

CERTIFICATE OF SERVICE

I, Richard S. Kohn, attorney for the appellees herein and a member of the Bar of the United States Supreme Court, certify that on September 27, 1974, I served copies of Appellees' Motion to Affirm, Motion for Consolidation of Appeals, Motion for Leave to Proceed In Forma Pauperis and Affidavits of Jean Glodgett and Roger Percy on the defendants in the manner prescribed by law, by placing same in the United States mail, first class and postage prepaid, addressed to the office of the counsel of record, and as to the Solicitor General, by air mail postage prepaid. The addressees are as follows:

Kimberly B. Cheney
Attorney General
State of Vermont
Pavilion Building
Montpelier, Vermont 05602

Robert H. Bork
Solicitor General
Department of Justice
Washington, D.C. 20530

David I. Kalib
Ass't. Attorney General
Dep't. of Social Welfare
87 Main Street
Montpelier, Vermont 05602

All parties required to be served have been served as shown by this certification.

Richard S. Kohn
Richard S. Kohn

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